

TITLE 14. Fish and Game Commission Notice of Proposed Changes in Regulations

**(Continuation of California Notice Register 2006, No. 7-Z,
and Meetings of March 3, April 7 and May 4, 2006.)**

NOTE: The Fish and Game Commission is exercising its powers under Section 202 of the Fish and Game Code as the following changes to the proposed regulations may not be available to the public for the full public comment period prior to adoption.

(NOTE: See Updated Informative Digest changes shown in **bold face** type.)

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 220, 240, 316.5, and 2084 of the Fish and Game Code and to implement, interpret or make specific sections 200, 202, 205, 316.5 and 2084 of said Code, proposes to amend Section 27.80, Title 14, California Code of Regulations, regarding Ocean Salmon sport fishing.

Updated Informative Digest/Policy Statement Overview

The Pacific Fishery Management Council (PFMC) annually reviews the status of **West Coast** salmon populations. As part of that process, it recommends ocean fishing regulations aimed at meeting biological and fishery allocation goals specified in law or established in the Salmon Fishery Management Plan.

The PFMC is expected to adopt regulation recommendations, similar to recent years, for the recreational ocean salmon fisheries in federal waters (3 to 200 miles offshore) off the states of Washington, Oregon, and California for 2006. The various alternatives the PFMC will examine in the process of adopting the management options on March 10, 2006, for public review may include:

1. the minimum size of salmon that may be retained;
2. the number of rods anglers may use (e.g., one, two, or unlimited);
3. the type of bait and/or terminal gear that may be used (e.g., amount of weight, hook type, and type of bait or no bait);
4. the number of salmon that may be retained per angler-day or period of days;
5. the definition of catch limits to allow for combined boat limits versus individual angler limits;
6. the allowable fishing dates and areas; and
7. the overall number of salmon that may be harvested, by species and area.

Since the development of the Initial Statement of Reasons, the PFMC released their *Preseason Report I: Stock Abundance Analysis of 2006 Ocean Salmon Fisheries* which indicates the Klamath fall chinook stock is at extremely low ocean abundance in 2006. This projection coupled with above average Klamath fall chinook impacts in the 2005 fall commercial and recreational fisheries indicates the stock will not meet the PFMC natural spawner escapement

goal. This goal is a minimum of 35,000 adults spawning in natural areas each year. Even with no further fishing of this stock in the ocean and river fisheries in 2006, the expected number of natural spawners would be 29,200.

In response to their meeting on March 5-10, 2006, in Seattle, Washington, the PFMC proposed three options, a near status-quo season, a slightly more conservative season, and a complete closure for the 2006 ocean salmon season.

Under all three **March** options, the season structure is similar to 2005 regulations except as follows: For all areas in 2007, the opening dates between Horse Mountain and Point Arena will be February 17 and April 7 below Point Arena. The San Francisco Bay **between the Golden Gate Bridge and the Carquinez Bridge** will remain open for salmon fishing from April 1 to November 12 **during any ocean closure** and there is one editorial change for regulation clarification.

Option 1

Seasons: For north of Horse Mountain and Humboldt Bay (Klamath Management Zone), the open season is May 26 to July 4 and August 14 to September 11 (five fewer days). The area between Horse Mountain and Point Arena (Fort Bragg) is open from February 18 to July 10, July 16 to July 17 and July 23 to November 12 (seven fewer days). The area between Point Arena and Pigeon Point (San Francisco) is open from May 1 to November 12 (30 fewer days). The area between Pigeon Point (Monterey) and Point Sur is open May 1 to September 24 (30 fewer days). The area below Point Sur is open from April 1 to September 24 (the same number of days).

Option 2

Seasons: For north of Horse Mountain and Humboldt Bay (Klamath Management Zone), the open season is May 28 to May 31, July 1 to July 4 and August 23 to September 6 (51 fewer days). The area between Horse Mountain and Point Arena (Fort Bragg) is open February 18 to April 30, July 1 to July 9, September 16 to October 15 and November 1 to November 7 (147 fewer days). The area between Point Arena and Pigeon Point (San Francisco) is open from May 1 to May 15, June 24 to July 9, September 1 to September 15 and October 16 to November 6 (158 fewer days). The area between Pigeon Point (Monterey) and Point Sur is open from May 1 to May 31 and September 1 to September 12 (134 fewer days). The area below Point Sur is open from April 1 to September 24 (the same number of days).

Option 3

Seasons: For north of Horse Mountain and Humboldt Bay (Klamath Management Zone), the season will not open in 2006 (74 fewer days). The area between Horse Mountain and Point Arena (Fort Bragg) is open from February 18 to April 30 (193 fewer days). The area between Point Arena and Pigeon Point (San Francisco) will not open during 2006 (266 fewer days). The area between Pigeon Point (Monterey) and Point Sur will not open during 2006 (177 fewer days). The area below Point Sur is open from April 1 to September 24 (the same number of days).

The final regulation recommendations will be made by the PFMC on April 7, 2006. Upon approval of the PFMC's management recommendations by the Secretary of Commerce (SOC),

the State must move in a timely manner to conform its ocean sport fishing regulations for salmon in State waters (0 to 3 miles offshore) to those agreed upon by the PFMF. Otherwise, preemption of State regulatory authority by the SOC could occur if State regulations are in conflict with Federal regulations. The Federal regulations are expected to be implemented effective May 1, 2006.

The PFMF has determined that conditions this year allowed the PFMF Salmon Fishery Management Plan natural spawner escapement goal to be temporarily set at 21,000 without compromising the long-term productivity of the stock.

In response, on April 7, 2006, the PFMF provided a recommendation for a limited 2006 ocean salmon season to the National Marine Fisheries Service (NMFS) which was less restrictive for the ocean recreational salmon fishery than the three proposed options from the March 5-10, 2006 PFMF meeting.

On April 28, 2006, the NMFS accepted the PFMF recommendation and approved an emergency rule to allow limited salmon fishing along the Oregon and California coasts. These regulations opened the ocean salmon fishery in federal waters on May 1, 2006.

The Fish and Game Commission (Commission) adopted the federal ocean salmon regulations for the state waters off California on May 4, 2006 via emergency action. The Commission filed the emergency action on May 5, 2006 with the Office of Administrative Law and it was effective on May 11, 2006.

This regulatory action will make the May 5, 2006, emergency regulations permanent and adopts the PFMF 2006 season and 2007 opening dates for state waters. The changes for each management area are listed in the following paragraphs:

The waters north of Horse Mountain and in Humboldt Bay will be open May 15 through July 4 and September 1 to 6. The 2007 season opener will be decided in April 2007 by the PFMF and the Commission and the section will be amended pursuant to the Administrative Procedure Act.

The waters between Horse Mountain and Point Arena opened on February 18, 2006. The 2006 season will run from February 18 through June 4, June 7 through June 11, June 14 through June 18, June 21 through June 25, June 28 through July 9, July 15 through July 16, July 22 through July 23, and July 26 through November 12. The 2007 season will open on February 17, 2007.

The waters between Point Arena and Pigeon Point opened on April 1, 2006. The 2006 season will run from April 1 through June 11, June 14 through July 9, and July 12 through November 12. The 2007 season will open on April 7, 2007.

The waters between Pigeon Point and Point Sur opened on April 1, 2006. The 2006 season will run from April 1 through September 24. The 2007 season will open on April 7, 2007.

The waters below Point Sur opened on April 1, 2006. The 2006 season will run from April 1 through September 24. The 2007 season will open on April 7, 2007.

In addition to the federal conformance regulations listed above, the Commission is proposing that the San Francisco Bay between the Golden Gate Bridge and the Carquinez Bridge remain open to salmon fishing from April 1 to November 12 during any ocean closure.

Minor changes have been made to improve the clarity of the regulations.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held at the Mammoth Inn, 1 Minaret Road, Mammoth Lakes, CA, on Friday, June 23, 2006 at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before June 20, 2006, at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@fgc.ca.gov, but must be received no later than June 23, 2006, at the hearing in Mammoth Lakes, CA. E-mail comments must include the true name and mailing address of the commentor.

The regulations as proposed in strikeout-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, John Carlson, Jr., Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to John Carlson or Sherrie Koell at the preceding address or phone number.

Gary B. Stacey, Regional Manager, Marine Region, Department of Fish and Game, phone (562) 342-7108, has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

Recreational ocean salmon fishing takes place primarily in two modes, (1) anglers fishing from privately owned boats, and (2) anglers employing the services of the charter or party boat fleet. In general, success rates on charter vessels tend to be higher than success rates on private vessels. Nonetheless, there are small amounts of shore-based effort directed toward ocean area salmon, primarily fishing occurring off jetties and piers.

Summary information for year **2005** recreational catches of salmon indicates that **143,200** salmon were landed by anglers in California (**Review of 2005 Ocean Salmon Fisheries, PFMC 2006**). Just in the California counties north of Santa Barbara County*, the number of ocean fishing trips taken by anglers in year **2005**, specifically to catch ocean salmon, totaled **185,000**, detailed as follows: **1,808** trips taken **from shore**, **29,168** trips on party or charter boats, and **154,332** trips taken on personal or private boats. (**CRFS 2005**).

The year **2005** trip-related direct expenditures, by these ocean salmon anglers, are estimated to be approximately **\$11,395,428** (in year 2005 dollars), detailed as follows: **\$98,597** by **shore based** anglers, **\$3,675,699** by anglers using charter boats, and **\$7,621,132** by anglers using private boats. These annual trip expenditures cover items like: private transportation, charter fees, food, public transportation, boat fuel, lodging, bait and ice, equipment, and launch fees (in order of greatest to least amount expended). Note: however, these expenditures do not include annual expenses for durable or big-ticket items assumed to last more than one season or be used in catching fish species other than ocean salmon. Since recreational fishing in California produces ripple effects in the State's economy, meaning that each dollar spent on recreational fishing helps fuel the State's economy by stimulating additional activity in the form of jobs, income, and output, we adjust these direct expenditure projections to a total output estimate of **\$21,817,450** (in 2005 dollars).

Estimated Ocean Salmon Angler Annual Trip Expenditures, By District And Fishing Mode, From January-December 2005 , Presented in 2005 dollars. (CRFS 2006)				
California Coastal District	Fishing Mode			Totals
	Shore Based	Party/Charter Boat	Private Boat	
Central (San Luis Obispo County - Santa Cruz County)	\$50,280	\$323,111	\$1,644,352	\$2,017,743
Bay Area (Marin County - San Mateo County)	\$16,851	\$2,941,013	\$2,476,873	5,434,737
Wine (Sonoma County - Mendocino County)	0	\$355,119	\$2,057,970	2,413,089
Redwood (Humboldt County - Del Norte County)	\$31,466	\$56,456	\$1,441,937	1,529,859
Total Direct Expenditures	\$98,597	\$3,675,699	\$7,621,132	\$11,395,428
Total Direct, Indirect, and Induced Output Estimate for the State				\$21,817,450

As shown in the table above, the majority of recreational angler expenditures in targeting ocean salmon were in the charter boat mode of fishing. As of January 2006, there were 451 California Commercial Passenger Fishing Vessel permits (party boat permits) issued for the 2005-2006 season which runs April through March. All of these party boats are classified as Small Businesses under the definitions established in California Government Code Section 11342.610. However, not all party boats participate in the ocean salmon fishery. In **the** year 2005, the total number of party boats participating in the ocean recreational salmon fishery was 105, with only 76 of those considered to be actively participating in the ocean salmon fishery (**Review of 2005 Ocean Salmon Fisheries, PFMC 2006**).

*The length of coastline impacted by a proposed 2006 federal salmon closure extends from Del Norte County through Monterey County, or about 405.6 nautical miles of California coastline. Due to the way in which angling data is divided into districts, the above impact analyses will tend to be overstated. This is because the geographic range of California counties north of Santa Barbara County covers about 513.1 nautical miles of coast. Thus, the actual maximum impact area covers only 80% of the coastline areas included in the analyses.

In the second amended ISOR, Option I would result in a 9.84 percent reduction in the available days of ocean salmon fishing and a reduction of about \$2.1 million in total economic output for businesses. Option II would result in a 66.04 percent reduction and reduction of about \$14 million in total economic output for businesses. Option III would result in a 90.3 percent reduction and reduction of about \$19.7 million in total economic output for businesses.

The emergency adopted proposal would result in a 5.12 percent reduction in the available days of ocean salmon fishing. On a pro-rata basis, reducing the estimated business output for merchants that provide goods and services to salmon anglers in the State by this same percentage would result in a reduction of \$1,117,336 in total economic output for businesses.

The Commission has made an initial determination that the amendment of this regulation may have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. The Commission has considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit alternative proposals. Submissions may include the following considerations:

- (i) the establishment of differing compliance or reporting requirements or timetables which take into account the resources available to businesses;
- (ii) consolidation or simplification of compliance and reporting requirements for businesses;
- (iii) the use of performance standards rather than prescriptive standards; or
- (iv) exemption or partial exemption from the regulatory requirements for business.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

In the second amended ISOR, Option I would result in a 9.84 percent reduction in the available days of ocean salmon fishing and a reduction of about 22.7 jobs in businesses that provide goods and services to anglers. Option II would result in a 66.04 percent reduction and a reduction of about 152.2 jobs in businesses that provide goods and services to anglers. Option III would result in a 90.3 percent reduction and a reduction of about 208.1 jobs in businesses that provide goods and services to anglers.

The emergency adopted proposal would result in a 5.12 percent reduction in the available days of ocean salmon fishing. On a pro-rata basis, the estimated employment impacts could result in a reduction of about 11.8 jobs in businesses that provide goods and services to anglers.

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. There are no new reporting requirements imposed as a result of the proposed regulations.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

There are no new reporting requirements to State agencies as a result of the proposed regulations. However, reduced recreational fishing opportunities would likely result in revenue impacts to the State, estimated to be **\$105,000**. This is due to reduced demand for recreational fishing licenses, permits, and or stamps, normally purchased from the State during the 2006 ocean salmon season.

In addition, Department enforcement costs may increase due to the complexity and logistical requirements of the 2006 salmon regulations, increasing up to \$496,636 above normal costs. This is due to the numerous short duration intervals when salmon angling is allowed, newly introduced for the 2006 season.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Jon K. Fischer
Assistant Executive Director

Date: June 6, 2006